

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

DEVON O. JOHNSON,

Plaintiff,

v.

**AMERICAN INDEPENDENT
INSURANCE COMPANY, a
foreign corporation,**

Defendant.

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C.A. No: 09C-11-017 (RBY)

Submitted: August 6, 2010

Decided: October 1, 2010

*Upon Consideration of Defendant's
Motion for Summary Judgment*

GRANTED

OPINION AND ORDER

Jeffrey J. Clark, Esq., Schmittinger & Rodriguez, P.A., Dover, Delaware for Plaintiff.

Nicholas E. Skiles, Esq., Swartz Campbell, LLC, Wilmington, Delaware for Defendant.

Young, J.

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SUMMARY

_____Defendant American Independent Insurance Company (“Defendant”) moves for summary judgment against Plaintiff Devon O. Johnson (“Plaintiff”) on the basis that Plaintiff is not entitled to insurance coverage pursuant to a policy of insurance issued by Defendant. This suit arises out of an August 21, 2007 automobile collision. While Defendant claims that the applicable policy was cancelled at the time of the collision, Plaintiff maintains that Defendant’s policy was, in fact, reinstated during the relevant time period. Because no genuine issue of material fact remains concerning the termination for non-payment of any insurance coverage for the vehicle in which Plaintiff was a passenger at the time of the collision, Defendant’s Motion for Summary Judgment is **GRANTED**.

FACTS

Plaintiff seeks personal injury protection benefits (“PIP”) from an insurance policy issued to Aja Bradley (“Bradley”) under policy number 3059485 (the “Bradley Policy”). On August 21, 2007, Plaintiff was injured while an occupant in a 1995 Honda Accord EX driven and owned by Bradley. Plaintiff filed a claim for PIP benefits with Defendant, and Defendant denied payment. Defendant based its denial on records indicating that the Bradley Policy was cancelled at the time of the collision.

According to Defendant, the Bradley Policy was issued on December 15, 2006

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through A-Z Insurance, Inc. in Dover, Delaware.¹ On May 1, 2007, Defendant notified Bradley via U.S. Mail that unless she paid her outstanding premiums, her policy would be cancelled on May 13, 2007. Defendant claims that it did not receive payment, and, consequently, cancelled the Bradley Policy for non-payment of premium on May 13, 2007 at 12:01 a.m., some three months before the collision.

STANDARD OF REVIEW

_____ “Summary judgment is granted only where, considering the facts in a light most favorable to the non-moving party, there is no genuine issue of material fact.² The moving party must show that, on the unquestioned facts, he is entitled to judgment as a matter of law.”³

DISCUSSION

Title 18 *Del. C.* § 3904(a)(1) authorizes an insurance company to cancel an automobile policy for the non-payment of a premium.⁴ 18 *Del. C.* § 3905 details the

¹ As is typical with the issuance of insurance documentation, Plaintiff’s Declarations Sheet read that the policy period was from December 16, 2006 until December 15, 2007.

² *Moore v. Travelers Indem. Ins. Co.*, 408 A.2d 298, 300 (Del. Super. Nov. 6, 1979) (citing *Shultz v. Delaware Trust Co.*, 360 A.2d 576, 579 (Del. Super. June 28, 1976) (additional citations omitted).

³ *Id.* (citing *Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. Sept. 18, 1973)).

⁴ 18 *Del. C.* § 3903(a)(3) defines “Nonpayment of premium” as “[the] failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of

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procedures that an insurance company must follow before doing so:

“No cancellation of a policy to which § 3904(a) of this title applies shall be effective unless notice thereof is mailed or delivered by the insurer to the named insured at least 30 days prior to the effective date of cancellation and accompanied by the reason for cancellation, *except that, where cancellation is for nonpayment of premium, at least 10 days notice of cancellation accompanied by the reason therefor shall be given.*”⁵

Defendant has provided the Court with: (1) a May 1, 2007 letter notifying Bradley that her insurance would be cancelled unless she paid her premium by May 13, 2007; (2) a May 13, 2007 letter cancelling Bradley’s insurance policy for non-payment; (3) a July 24, 2007 letter from the Uninsured Motorist Department investigating Bradley’s lack of insurance coverage; and (4) an August 23, 2007 letter describing Bradley’s voluntary surrender of her tags in response to the Uninsured Motorist Department’s audit.⁶

The documentation provided by the parties demonstrates Defendant’s position that Bradley, and therefore Plaintiff, did not have insurance coverage at the time of the accident. Plaintiff has produced no evidence that Bradley paid for the policy before it was cancelled by Defendant. Further, there is no evidence in the record suggesting that Bradley was unaware that her policy was being cancelled.

Plaintiff contends that summary judgment is inappropriate because there is a

credit.”

⁵ Emphasis added.

⁶ This letter indicates that Bradley voluntarily surrendered her tags two days after the collision.

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remaining issue of material fact as to whether or not Bradley's policy was reinstated prior to the collision. Plaintiff points to the testimony of Defendant's Rule 30(b)(6) deponent, one of Defendant's insurance underwriters, which indicates that Bradley received an insurance identification card effective from June 15, 2007 to December 15, 2007. A review of Defendant's documentation, however, indicates that this insurance card was sent in error, as Bradley's policy had been cancelled on May 13, 2007. Bradley did not attempt to make any payments in the three-month interim between the policy's cancellation and her collision. Moreover, if Bradley was uncertain as to whether she had effective insurance coverage, the Uninsured Motorist Department's letter, sent almost a month prior to the accident, provided notice sufficient to dispel any confusion.

The record shows that there is no genuine issue of material fact remaining to be resolved, and that the American Independent Insurance Company complied with the statutorily mandated procedures prescribed by the Delaware Code. Therefore, Defendant's Motion for Summary Judgment is **GRANTED**.

SO ORDERED.

/s/ Robert B. Young
J.

RBV/sal
cc: Opinion Distribution
File
